

specified time early in the day of filing, i.e., 10 a.m.¹³⁵ Pacific Telesis and U.S. West oppose this suggestion.¹³⁶

c. Discussion

47. We find that a program for the electronic filing of tariffs and associated documents would facilitate administration of tariffs. An electronic filing program could afford filing parties a quick and economical means to file tariffs while giving interested parties virtually instant notification and access to the tariffs. In addition, we conclude that participation in such a system should be mandatory for all LECs, because, if some LECs are allowed to continue to file on paper, we would not realize the full benefit of electronic filing. An electronic filing system also should not impose undue burdens on LECs, but rather reduce their overall administrative burdens. Accordingly, subject to the availability of adequate funding, we will establish a program for the electronic filing of tariffs and associated documents, such as transmittal letters, requests for special permission, and cost support documents. We will require LECs to file this information electronically. Our program will also permit filing of petitions to suspend and investigate and responsive documents electronically and we encourage parties to do so. Because a database system would place significant strictures on filing, including a significant alteration of the format of current tariffs, we will not require that tariffs and associated documents be filed in a database format. Instead, our electronic filing program will permit entities to file electronically consistent with their current formats. We further determine that the Commission, at least at the initial stage of implementation, will be responsible for administering the electronic filing program. We may consider other alternatives at a later time.

48. We delegate authority to the Chief, Common Carrier Bureau to establish this program including determinations concerning transition mechanisms, establishment of procedures to assure security, when the program should be initiated, and any other issues that may arise regarding the initiation of the electronic filing program. We direct the Bureau to consult with industry and potential users informally and share plans for its proposed implementation and make any necessary adjustments in light of industry and user views, as appropriate. We also direct the Bureau to permit filing of, and access to, LEC tariffs and associated documents by means of the Internet. We direct the Bureau to implement this program in coordination with other electronic filing initiatives within the agency.

2. Exclusive Reliance on Post-Effective Tariff Review

¹³⁵ Ad Hoc Comments at 6-7; McLeod Comments at 7; MFS Comments at 6.

¹³⁶ Pacific Telesis Reply Comments at 17; U.S. West Reply Comments at 11.

a. Background

49. We currently rely on pre- and post-effective review of tariffs to ensure LEC compliance with Title II of the Communications Act. In the Notice, we solicited comment on whether we can, and should, in implementing the streamlined tariff provisions of the 1996 Act, adopt a policy of relying exclusively on post-effective tariff review, at least for certain types of tariff filings, to oversee LEC compliance with the Act. In the Notice, we asked whether exclusive reliance on post-effective review could significantly streamline the tariff review process while continuing to provide an opportunity for evaluation of the lawfulness of tariffs. We sought comment on whether, under such a policy, we should retain the discretion to conduct a pre-effective tariff review in individual cases. We also solicited comment on the extent to which section 204(a), which provides that when a tariff is filed, the Commission may either on its own initiative or "upon complaint" suspend and investigate the tariff,¹³⁷ limits our ability to rely exclusively on post-effective tariff review.¹³⁸

b. Comments

50. Commenters generally oppose relying exclusively on post-effective tariff review.¹³⁹ AT&T states that Congress did not intend to eliminate pre-effective review of LEC tariffs. To find otherwise, AT&T explains, would permit LECs to impose rates and terms on customers that would stay in effect until such time as the Commission could conclude an investigation. In addition, AT&T contends that such a finding would negate section 204(a), which authorizes the Commission to initiate an investigation when a complaint is filed or upon its own initiative "whenever there is filed any new or revised charge, classification, regulation or practice."¹⁴⁰ CompTel points out that reliance solely on post-effective review would be particularly inappropriate if the Commission interprets the term "deemed lawful" as changing the legal status of tariffs. Under this scenario, CompTel claims that consumers would be denied any protection from LEC tariff filings that are given the force of an affirmative finding of lawfulness and reviewed only after taking effect. According to CompTel, consumer remedies would be further limited by the Commission's inability to suspend a tariff after it has become effective.¹⁴¹

¹³⁷ 47 U.S.C. Sec. 204(a)(1).

¹³⁸ Notice at paras. 23-24.

¹³⁹ See e.g., Ameritech Comments at 14; CapCities Comments at 9; USTA Comments at 9-10.

¹⁴⁰ AT&T Comments at 11.

¹⁴¹ CompTel Comments at 6.

51. Sprint, Frontier, and NECA¹⁴² are the only commenters that favor our proposal to rely solely on post-effective review of tariffs. According to NECA, relying on post-effective tariff review would eliminate the need for filing of petitions and allow tariffs to go into effect within the streamlined notice periods, thereby furthering the intent of the 1996 Act to accelerate the tariff review process.¹⁴³ Sprint asserts that post-effective review of LEC tariffs will suffice, provided that the Commission adopts the position that "deemed lawful" only creates a rebuttable presumption of lawfulness. The remedies provided under sections 205 and 208 of the Act would still be available, and LEC customers could recover damages for tariffs found to be unlawful as of the effective date of the tariff filing, according to Sprint.¹⁴⁴

c. Discussion

52. We conclude that pre-effective tariff review is required by the statute which contemplates pre-effective tariff review by identifying specific actions that we can take, i.e., suspension and investigation, prior to the effective date of the tariff. In addition, eliminating pre-effective tariff review would restrict the opportunity for interested parties to obtain review of potentially unlawful tariffs. We further find that pre-effective review is a useful tool to assure carriers' compliance with sections 201 through 203 of the Act. Therefore, we will retain our practice of pre-effective review. We will continue to rely additionally on post-effective tariff review, including the section 208 complaint process and in section 205 tariff investigations.

3. Pre-Effective Tariff Review of Streamlined Tariff Filings

53. In the Notice, we solicited comment on what measures, if any, the Commission should take to facilitate decision-making within seven or fifteen days concerning whether to suspend and investigate tariffs filed pursuant to section 204(a)(3).¹⁴⁵

a. Summaries and Legal Analyses

1. Background

54. In the Notice, we solicited comment on whether we should establish requirements that LECs file summaries of proposed tariff revisions with their streamlined

¹⁴² NECA Comments at 2-3; Frontier Comments at 5-6; Sprint Comments at 6.

¹⁴³ NECA Comments at 3-4.

¹⁴⁴ Sprint Comments at 17.

¹⁴⁵ Notice at para. 25.

tariff filings in order to provide a more complete description than under current requirements,¹⁴⁶ and that LEC tariffs filed on a streamlined basis be accompanied by an analysis showing that they are lawful under applicable rules.¹⁴⁷

2. Comments

55. With the exception of Ameritech, the LECs unanimously oppose the Commission's proposal to require them to file a summary with tariff filings.¹⁴⁸ All of the LECs also oppose a requirement that they file an analysis demonstrating that the tariff filing is lawful. LECs argue that these requirements would impose increased burdens, contrary to the deregulatory goals of the 1996 Act.¹⁴⁹ They also argue that the information contained in the proposed summaries is already provided in the Description and Justification (D&J) section of tariff transmittals.¹⁵⁰ Ameritech further states that requiring a legal analysis is inconsistent with the directive in section 204(a)(3) that LEC tariffs are deemed lawful and that the burden of demonstrating otherwise should rest on parties opposing the filing.¹⁵¹ NYNEX states that the Commission should adopt reduced tariff support requirements for streamlined tariff filings.¹⁵² Finally, CBT states that the legal analysis requirement would have a chilling effect on small and mid-size LECs that may be sensitive to legal fees.¹⁵³

56. Non-LEC commenters support these possible requirements, stating that they would assist the Commission and the public in reviewing tariff filings without imposing a

¹⁴⁶ Section 61.33(b)(1) of the Commission's rules already requires that LEC tariff filings include a summary of the filing's basic rates, terms, and conditions. 47 C.F.R. § 61.33(b)(1).

¹⁴⁷ Notice at para. 25.

¹⁴⁸ Ameritech questions the need for the information in the proposed summary, but to the extent that the submission would not be burdensome, does not oppose the proposal. Ameritech Comments at 26.

¹⁴⁹ USTA Comments at 10; NYNEX Comments at 19-20; SWBT Comments at 13-14; CBT Comments at 11; Sprint Comments at 7.

¹⁵⁰ ALLTEL Comments at 5; NECA Comments at 5; Bell Atlantic Comments at 7; USTA Comments at 10; GTE Comments at 2-3; Pacific Telesis Comments at 18; SWBT Comments at 14; CBT Comments at 11; BellSouth Comments at 12; Sprint Comments at 6.

¹⁵¹ Ameritech Comments at 26-27.

¹⁵² NYNEX Comments at 20-21.

¹⁵³ CBT Comments at 11.

significant burden on the LECs.¹⁵⁴ CapCities suggests that the summaries include details, on a service-by-service basis, of the rate or service impact of the proposed tariff and the reasons in support of the proposed changes.¹⁵⁵

3. Discussion

57. We will not impose any additional requirements for supporting information concerning LEC tariff filings at this time. Although a summary and legal analysis could be useful to the Commission and the public, we find that it is not necessary to require it as part of our initial implementation of streamlined LEC tariff filings because we are not convinced that it would expedite the tariff review process. Instead, we will gain experience from our initial administration of streamlined LEC tariffs and revisit this issue if necessary.

b. Presumptions of Unlawfulness

1. Background

58. In the Notice, we solicited comment on whether it would be consistent with the 1996 Act to establish presumptions of unlawfulness for narrow categories of tariffs, such as tariffs facially not in compliance with our price cap rules, that would permit suspension and designation of issues for investigation through abbreviated orders or public notices. We solicited comment on what kinds of tariffs could be accorded this presumption.¹⁵⁶

2. Comments

59. All LECs oppose establishing presumptions of unlawfulness. They argue that these presumptions would be contrary to section 204(a)(3).¹⁵⁷ For example, Bell Atlantic argues that, "[t]here is no way to reconcile [establishing presumptions of unlawfulness] with the statutory mandate, that absent direct action by the Commission, tariff filings are 'deemed lawful' within 7 to 15 days."¹⁵⁸ Pacific Telesis explained that, "[b]y deeming LEC tariffs lawful at the time of filing, Congress created a presumption of continuing lawfulness which

¹⁵⁴ TW Comm Comments at 8-9; GSA Comments at 12; AT&T Comments at 12; Ad Hoc Comments at 8; TRA Comments at 11.

¹⁵⁵ CapCities Comments at 10.

¹⁵⁶ Notice at para. 25.

¹⁵⁷ Pacific Telesis Comments at 19-20; USTA Comments at 10; SWBT Comments at 14; CBT Comments at 11; BellSouth Comments at 14; GTE Reply Comments at 19; Bell Atlantic Comments at 5.

¹⁵⁸ Bell Atlantic Comments at 5.

puts the burden on the party challenging the tariff to overcome the presumption."¹⁵⁹

60. The Interexchange Carriers (IXCs) support the proposal, suggesting further that the Commission should reject any tariff filing that is facially inconsistent with any existing rule or regulation.¹⁶⁰ CompTel states that the presumptions would help the Commission serve its dual mandates of protecting consumer interests and expediting the tariff review process.¹⁶¹

3. Discussion

61. We will not establish presumptions of unlawfulness for any categories of tariffs. Such presumptions would be inconsistent with the legislative intent of this provision. Instead, consistent with our current practice, we intend to utilize the tariff review process to identify problematic tariffs that warrant suspension. We note, however, that tariffs that facially do not comply with our rules, such as out-of-band price cap filings, will, for that reason, continue to have a high probability of rejection or suspension and investigation.

c. Treatment of Tariffs Containing Both Rate Increases and Decreases

1. Background

62. The 1996 Act provides that LEC tariffs that propose to decrease rates shall be effective in 7 days and tariffs proposing rate increases shall be effective in 15 days. The statute is silent on which notice period will apply to tariffs that contain both increases and decreases. In the Notice, we tentatively concluded that the 15-day notice period should apply to such tariffs and that carriers wishing to take advantage of the 7-day notice period should file rate decreases in separate transmittals.¹⁶²

2. Comments

63. Non-LEC commenters support the Commission's proposal. They argue that it is necessary to protect the interest of customers to challenge rate increases, and that, therefore,

¹⁵⁹ Pacific Telesis Comments at 19.

¹⁶⁰ AT&T Comments at 12; MCI Comments at 19-20; *see also* CompTel Comments at 7; MFS Comments at 12; Ad Hoc Reply Comments at 14-15; TRA Comments at 12.

¹⁶¹ CompTel Comments at 7.

¹⁶² Notice at para. 26.

the longer notice period shall apply.¹⁶³ All the LECs, except BellSouth,¹⁶⁴ oppose this requirement because requiring separate transmittals would purportedly increase the regulatory burden on LECs.¹⁶⁵ As an alternative, NYNEX, SWBT, and Pacific Telesis suggest that the Commission look at the overall effect on the Actual Price Index¹⁶⁶ (API) for a service category to determine if a tariff filing should be classified as an increase or a decrease. They explain that most access services contain numerous individual rate elements, so that a tariff that reduces most rate elements for a particular service may nonetheless contain rate increases for individual elements.¹⁶⁷ ALLTEL suggests that small and mid-sized companies be permitted to define rate increases and decreases at the access category level. CBT suggests that all of the increases and decreases in a given transmittal be aggregated and the applicable notice period determined by the net overall change.¹⁶⁸

64. USTA states that price cap LECs should continue to identify increases or decreases at the rate element level pursuant to the current Part 61 rules. It further proposes that the Commission ensure a streamlined approach for small and mid-sized LECs by permitting rate-of-return LECs to define rate increases or decreases at the access category level and file accordingly. USTA also proposes that LECs under Optional Incentive Regulation be permitted to define rate increases at the basket level. Finally, USTA proposes the elimination of those Part 61 rules that require non-price cap LECs to list increases or decreases in specific rate elements in tariff transmittals.¹⁶⁹

65. Ad Hoc opposes the LECs' suggestion that the Commission use API calculations to determine whether the tariff should be considered a rate increase or decrease because section 204(a)(3) of the Act specifically provides for a fifteen-day notice period whenever a LEC files a tariff with a rate increase. Ad Hoc argues that, with the use of the API, there may be significant increases that are balanced out by decreases, thereby shortening the time interested members of the public would otherwise have to review the proposed rate

¹⁶³ Ad Hoc Comments at 8; CapCities Comments at 10; TRA Comments at 12; MCI Comments at 20; McLeod Comments at 5; CompTel Comments at 7; GSA Comments at 13.

¹⁶⁴ BellSouth states that the Commission's proposal seemed "reasonable." BellSouth Comments at 14.

¹⁶⁵ Pacific Telesis Comments at 21; SWBT Comments at 15; CBT Comments 12-13; USTA Comments at 11; ALLTEL Comments at 6; and NYNEX Comments at 21.

¹⁶⁶ The API is a term used as part of the calculation of price caps. Specifically, the API is an index of the level of aggregate rate element rates in a basket. *See, e.g.*, 47 C.F.R. § 61.3.

¹⁶⁷ NYNEX Comments at 21; SWBT Comments at 15-16; Pacific Telesis Comments at 21.

¹⁶⁸ ALLTEL Comments at 6; CBT Comments at 12-13.

¹⁶⁹ USTA Comments at 11.

increase.¹⁷⁰ Ad Hoc also states that customers typically purchase only some of the services made available in a carrier's tariff offering so there is the risk that members of the public could be subjected to rate increases without proper time to respond.¹⁷¹

66. Several commenters also address the need for establishing new notice periods for streamlined tariffs that propose changes in terms and conditions and for new services. AT&T proposes that the Commission require that LECs file tariffs proposing changes in terms and condition 30 days prior to the tariff's proposed effective date.¹⁷² GTE states that, because there is "no functional difference" between an increase in rates and a new service, new services should be subject to the same 15-day notice period as price increases.¹⁷³ Pacific Telesis suggests that the Commission treat new services as rate reductions and apply the 7-day notice period. Pacific Telesis maintains that new services, like rate reductions, benefit the public and therefore should be implemented as quickly as possible.¹⁷⁴

3. Discussion

67. We conclude that the 15-day notice period will apply whenever a tariff filing includes both rate increases and rate decreases and limit the application of the 7-day notice period to tariffs that only contain a rate decrease. Therefore, whenever a tariff transmittal includes an increase to any rate element, the longer notice period will apply even if other rates in the same transmittal are simultaneously decreased.¹⁷⁵ Our conclusion is supported by the statute, which specifically provides for a fifteen-day notice period whenever a LEC files a tariff with a rate increase. We reject arguments advanced by the LECs that this approach is contrary to the concept of streamlining or that this will increase the regulatory burden on them. Rather, this result will permit LECs to propose rate increases and decreases in the same tariff filing. All of the carriers' rate changes will still receive streamlined treatment. Rate decreases will be subject to the longer notice period because of the carriers' decision to include them in the same tariff filing as a rate increase. Carriers are free to take full advantage of the shorter seven-day notice period by transmitting rate decreases in a separate filing. We also reject the LECs' various suggestions to base the applicable notice period on

¹⁷⁰ Ad Hoc Reply Comments at p. 16.

¹⁷¹ Ad Hoc Reply Comments at 16.

¹⁷² AT&T Comments at 10.

¹⁷³ GTE Comments at 18.

¹⁷⁴ Pacific Telesis Comments at 10.

¹⁷⁵ This conclusion is also consistent with our decision to apply the 15-day notice period to both revisions to terms and conditions of existing tariffs and to new services. See para. 31, *supra*.

the net effect of changes to rate elements either at the access category level, basket level, or API. This will assure that customers that purchase only some elements of a tariff will receive the 15-days' notice that Congress intended for rate increases, even though rates for other elements decrease and even though rates measured at some aggregate level may decrease. In addition, we find that review of such calculations would unnecessarily complicate the tariff review process.

68. We further determine that the 15-day notice period shall also apply to tariffs that change terms and conditions or apply to new services even where there is no rate increase or decrease. This will result in the most efficient implementation of section 204(a)(3) by minimizing analysis of each filing to determine whether or not it should be considered a rate increase, decrease, or a change in terms and conditions. Thus, under the rules we establish, all LEC tariff transmittals, other than those that solely reduce rates, shall be filed on 15-days' notice. If there are other significant changes, the tariff transmittal will be subject to a 15-day notice period.

d. Mechanisms to Identify Contents of Filings

1. Background

69. In the Notice, we proposed requiring carriers to identify specifically tariffs filed pursuant to section 204(a)(3) and whether the transmittal contains a rate increase, decrease or both. We solicited comment on requiring either a label or a statement in the transmittal letter to achieve this result.¹⁷⁶

2. Comments

70. Only SWBT opposes our proposal. It explains that the proposal is unnecessary because the LECs currently provide this information by making a notation on tariff pages indicating that it contains either an increase or reduction, and through the Description and Justification (D&J) accompanying a new or restructured tariff.¹⁷⁷ USTA also states that the D&J accompanying LEC tariffs adequately informs interested parties of the contents of a filing. USTA argues, however, that, should the Commission adopt such a requirement, it should apply to tariff filings of LEC competitors as well.¹⁷⁸ Ad Hoc, ALLTEL, BellSouth,

¹⁷⁶ Notice at para. 26.

¹⁷⁷ SWBT Comments at p. 16.

¹⁷⁸ USTA Comments at 12.

and TRA support the proposal to require LECs to identify such tariffs in the transmittal letter.¹⁷⁹

3. Discussion

71. We will require that all LECs display prominently in the upper right hand corner of the tariff transmittal letters a statement indicating that the tariff is being filed on a streamlined basis under section 204(a)(3) of the Act and whether it is being filed on 7- or 15-days' notice. While review of the LEC tariff including notations on tariff pages and the D&J would inform interested parties of the contents of the filing, this statement by the carrier will allow the Commission and the public to identify quickly whether the tariff is eligible for streamlined treatment and the notice period to be applied to the filing, without imposing any undue burdens on carriers. Without such a statement, we will treat a tariff transmittal as filed outside of section 204(a)(3), *i.e.*, not on a streamlined basis.

e. Commission Notification to Interested Parties

1. Background

72. In the Notice, we sought comment on the best mechanism for alerting Commission staff and interested parties about the contents of LEC tariff filings.¹⁸⁰ The Notice proposed that we provide affirmative notice of LEC tariff filings to interested parties via e-mail. We sought comment on whether we should adopt the proposal before, or, only when, electronic filing of tariffs is implemented.¹⁸¹

2. Comments

73. Most commenters support the proposal.¹⁸² McLeod suggests that the Commission require LECs to send notification to interested parties in order to preserve Commission resources.¹⁸³ CapCities suggests that the LECs notify interested parties by

¹⁷⁹ Ad Hoc Comments at 9; ALLTEL Comments at 6; BellSouth Comments at 14; and TRA Comments at 12.

¹⁸⁰ Notice at para. 26.

¹⁸¹ Notice at para. 26.

¹⁸² MCI Comments at 21; MFS Comments at 10-11; ACTA Comments at 9; Pacific Telesis Comments at 22; GSA Comments at 13; KMC Comments at 8; CapCities Comments at 10.

¹⁸³ McLeod Comments at 7. Pacific Telesis expressed opposition to McLeod's suggestion. Pacific Telesis Reply Comments at 14.

facsimile as well as by e-mail.¹⁸⁴ Only NECA and SWBT oppose the proposal. They argue that e-mail notification will be unnecessary upon implementation of an electronic filing system, and that parties already have procedures in place to monitor filings.¹⁸⁵

74. Several supporters of the proposal suggest that additional notification requirements be placed on the LECs. MCI, KMC, and MFS urge the Commission to require that a carrier provide advance public notice of its intention to transmit a tariff filing and identify the service that would be affected.¹⁸⁶ The LECs express strong opposition to these suggestions, stating that requiring advance notice would violate the Congressional mandate to streamline the tariff review process.¹⁸⁷ TRA, the only commenter to address whether the proposal should be implemented immediately or upon implementation of the electronic filing system, advocated the former.¹⁸⁸

3. Discussion

75. We find that e-mail notification is a simple, informal method of assisting parties in complying with the expedited notice periods required under the 1996 Act. Affirmative notice of tariff filings for the convenience of interested parties is possible without expending significant Commission resources. Despite the assertions from SWBT and NECA that parties have other means of learning of tariff filings, affirmative notice by e-mail will provide a useful way for interested parties to learn of tariff filings. Accordingly, we will notify by e-mail interested persons who request such notice of LEC tariff filings eligible for streamlined treatment. We delegate to the Chief, Common Carrier Bureau authority to establish this mechanism and to institute a means of receiving requests from interested persons. We envision that this e-mail notification will be provided on the day after the filing is made with the Commission. We emphasize that notice by e-mail will not constitute legal notice of filings, and failure of the Commission to provide the affirmative notice for any reason will not extend comment periods. In view of our decision, we see no benefit in requiring LECs to send e-mail notification of filings to interested parties. We also reject suggestions that we establish an additional requirement that LECs furnish advance notice of

¹⁸⁴ CapCities Comments at 10.

¹⁸⁵ SWBT Comments at 16-17; NECA Comments at 6.

¹⁸⁶ MCI Comments at 21; KMC Comments at 8; MFS Comments at 10-11.

¹⁸⁷ Ameritech Reply Comments at 14-15; GTE Reply Comments at 16-17; Pacific Telesis Reply Comments at 15; US West Reply Comments at 10; Bell Atlantic Reply Comments at 4-5; Sprint Reply Comments at 7; SWBT Reply Comments at 12.

¹⁸⁸ TRA Comments at 12.

tariff filings. That requirement is not necessary to provide adequate notice to interested parties of LEC tariff filings.

4. Notice Period and Filing Procedures

a. Deadlines for Petitions and Replies

1. Background

76. As indicated in the Notice, we need to establish new filing periods for petitions to suspend and reject LEC transmittals filed on 7- or 15-days' notice. The current pleading cycles listed in section 1.773 of our rules will not accommodate the filing of petitions and replies in response to LEC tariff changes made on 7-days' notice. In the Notice, we proposed to require that petitions against those LEC tariff filings that are effective within 7 or 15 days of filing must be filed within 3 days after the date of the tariff filing and replies 2 days after service of the petition.¹⁸⁹

2. Comments

77. Most of the commenting LECs, as well as GSA, support the Commission's proposal to require that petitions be filed within 3 days of the tariff filing and that replies be filed within 2 days of service of the petition.¹⁹⁰ NYNEX, MCI, AT&T, CapCities, and Ad Hoc state there is no reason to have the same filing periods for both tariffs filed on 15-days' notice and tariffs filed on 7-days' notice.¹⁹¹ AT&T and SWBT suggest shorter notice periods for replies than the Commission's proposal. Ameritech and Pacific Telesis sharply criticize AT&T's proposal for replies as one-sided and overly restrictive.¹⁹²

3. Discussion

78. We agree with commenters who recommend establishing different filing periods for petitions and replies based on whether the tariff filing at issue was filed on 7-days' notice or 15-days' notice. We require that petitions against LEC tariff transmittals that are effective 7 days from filing must be filed within 3 calendar days from the date of tariff filing, and

¹⁸⁹ Notice at para. 28.

¹⁹⁰ Ameritech Comments at 27; Pacific Telesis Comments at 23; CompTel Comments at 6; ALLTEL Comments at 6; USTA Comments at 12; BellSouth Comments at 15; CBT Comments at 13.

¹⁹¹ NYNEX Comments at 22; MCI Comments at 22; CapCities Comments at 10-11; Ad Hoc Comments at 9; AT&T Comments at 15-16.

¹⁹² Ameritech Reply Comments at 13; Pacific Telesis Reply Comments at 18.

replies must be filed within 2 calendar days of service of petition. We reject SWBT's suggestion that petitions be required on the business day following the filing, as well as AT&T's suggestion that replies be required on the calendar day following service of the petition, because these proposals unreasonably abbreviate the amount of time within which to submit filings.

79. With respect to LEC tariff filings that are effective on 15-days' notice, we agree with NYNEX, CapCities, and Ad Hoc, that the current filing schedule set forth in sections 1.773(a)(2)(ii) and 1.773(b)(1)(ii) is sufficient. These rules require petitions to be filed within 7 calendar days of the tariff filing.¹⁹³ Replies must be filed within 4 days of service of the petition.¹⁹⁴

b. Other Issues Relating to Computation of Time

80. The Act is silent on whether the new statutory notice periods refer to calendar days or working days. In the Notice, we tentatively concluded that the statutory notice periods refer to calendar days, not working days. All the LECS, except Bell Atlantic, and USTA, agree that calendar days should be used in computing notice periods.¹⁹⁵ Bell Atlantic argues that filings should not be calculated on a calendar day basis because this would leave inadequate time for the Commission to review the tariff.¹⁹⁶ ACTA also disagrees with the Commission's tentative conclusion because of concerns that LECs will strategically submit tariffs at times that limit the ability of interested parties to review them.¹⁹⁷ We interpret the statutory notice periods set out in section 204(a)(3) of the Act to refer to calendar days. This interpretation is consistent with the present computation of time set forth in section 1.773(a)(3) of the rules, which uses calendar days when calculating dates for filing petitions to suspend or reject a tariff. We find that using calendar days is consistent with existing Commission practice and best fulfills the intent of Congress to shorten the tariff review process.

81. The Notice proposed that, when a due date falls on a holiday or weekend, the

¹⁹³ 47 C.F.R. Section 1.773(a)(2)(ii).

¹⁹⁴ 47 C.F.R. Section 1.773(b)(1)(ii).

¹⁹⁵ SWBT Comments at 17; BellSouth Comments at 14; Ameritech Comments at 26; NYNEX Comments at 22; Pacific Telesis Comments at 22; NECA Comments at 6; USTA Comments at 12.

¹⁹⁶ Bell Atlantic Reply Comments at 8.

¹⁹⁷ ACTA Comments at 9-10.

document shall be filed on the next business day.¹⁹⁸ The LECs, the only parties to address this issue, support this proposal.¹⁹⁹ We adopt the proposal as stated in the Notice. This is consistent with sections 1.4(g) and 1.773(a)(3) of the Commission's rules. Therefore, when a due date falls on a holiday or weekend, the document shall be filed on the next business day.

82. The Notice also proposed including intermediate holidays and weekends in computing time periods for petitions and replies. All comments received support this proposal.²⁰⁰ We adopt the proposal as stated in the Notice, which is consistent with existing Commission practice set forth in section 1.773(a)(3). Therefore, intermediate holidays and weekends will be included in computing time periods.

c. Hand Delivery

1. Background

83. Section 61.33(d) requires the transmittal letter of any tariff filing made on less than 15-days' notice to include the name, address, and facsimile number of the person designated to receive service of petitions against the filing.²⁰¹ Section 1.773(a)(4) of the Commission's rules requires that petitions against a filing made on less than 15-days' notice be served personally or by facsimile.²⁰² The Notice proposed requiring that petitions and replies be hand-delivered to all affected parties where the filing party is a commercial entity.²⁰³

2. Comments

84. NECA, GSA, and Pacific Telesis support the Commission's proposal.²⁰⁴ USTA

¹⁹⁸ Notice at para. 28.

¹⁹⁹ NYNEX Comments at 22; Pacific Telesis Comments at 22; USTA Comments at 12; SWBT Comments at 18.

²⁰⁰ NYNEX Comments at 22; Pacific Telesis Comments at 22; USTA Comments at 12; SWBT Comments at 18; NECA Comments at 6.

²⁰¹ 47 C.F.R. § 61.33(d).

²⁰² 47 C.R.R. § 1.773(a)(4).

²⁰³ Notice at para. 28.

²⁰⁴ NECA Comments at 6; GSA Comments at 14; Pacific Telesis Comments at 23.

and SWBT support requiring hand delivery of petitions, but not replies.²⁰⁵ CBT and MCI state that facsimile service is sufficient with confirmed receipt.²⁰⁶ In the alternative, MCI suggests that required hand delivery be limited to parties with a representative in Washington, D.C.²⁰⁷ TRA states that facsimile transmissions should be added to hand delivery requirements as a consideration for small carriers with limited budgets.²⁰⁸ BellSouth states that only minor changes to sections 61.33 and 1.773(a)(4) are necessary to carry out the goals of the Commission.²⁰⁹ BellSouth proposes changing these rules to apply to tariffs and petitions filed on 15-days' notice or less.²¹⁰

3. Discussion

85. We find that in-hand service of petitions and reply pleadings will facilitate full participation by carriers and interested persons in the Commission's review of LEC tariffs, particularly in view of the shortened statutory notice periods in section 204(a)(3) and the implementing rules adopted here. In light of the comments of TRA, we also find that it is important to provide for service by facsimile transmission as an alternative to hand delivery. Therefore, we will amend sections 61.33 and 1.773(a)(4) to apply to tariffs and to all associated documents filed on 15-days' notice or less, and require that such tariff filings include, among other things, the facsimile number of the individual designated by the filing carrier to receive personal or facsimile service of petitions and that petitions and replies in connection with such tariff filings be served by hand or by facsimile.

d. Elimination of Public Comment Period

86. In the Notice, we sought comment on whether we should eliminate the public comment period during the 7- or 15-days' notice period. Only CBT supports our proposal to eliminate the public comment period.²¹¹ MCI, NYNEX, Ad Hoc, and Pacific Telesis all oppose the proposal as contrary to the right of the public to seek suspension and investigation

²⁰⁵ SWBT Comments at 18; USTA Comments at 12.

²⁰⁶ CBT Comments at 13; MCI Comments at 22-23.

²⁰⁷ MCI Comments at 22-23.

²⁰⁸ TRA Comments at 12.

²⁰⁹ BellSouth Comments at 15.

²¹⁰ BellSouth Comments at 15.

²¹¹ CBT Comments at 14.

of a tariff under section 204(a)²¹² of the Act.²¹³ As discussed above, we will retain pre-effective tariff review as a useful tool for ensuring that LEC tariffs are just and reasonable. Public participation in tariff proceedings serve the public interest. Accordingly, we will not eliminate the public comment period for LEC tariffs filed on 7- or 15- days' notice.

e. Protective Orders

1. Background

87. We regularly receive requests by carriers for confidential treatment of cost data filed with tariff transmittals. In many cases, we also receive requests under the Freedom of Information Act (FOIA)²¹⁴ for cost information for which a filing carrier has requested confidential treatment. As a practical matter, we frequently will be unable to respond to these requests within the 7- and 15-days tariff review periods established by the 1996 Act. In the Notice, we sought comment on whether we should routinely impose a standard protective order whenever a carrier claims in good faith that information qualifies as confidential under relevant Commission precedent.²¹⁵ We also solicited comment regarding the terms that we should include in a standard protective order and the types of data that should be eligible for confidential treatment.

2. Comments

88. The majority of the parties commenting on this proposal oppose the use of a standard protective order, albeit for conflicting reasons.²¹⁶ AT&T contends that we do not have the authority to issue a standard protective order because nothing in the FOIA or in the

²¹² As noted, Section 204(a) of the 1934 Act, 47 U.S.C. § 204(a), provides that, when a tariff is filed, the Commission may either on its own initiative or "upon complaint" suspend and investigate the tariff before it takes effect.

²¹³ MCI Comments at 24; NYNEX Comments at 23; Ad Hoc Comments at 10; Pacific Telesis Comments at 23.

²¹⁴ 5 U.S.C. § 552. As a practical matter, we do not rule on requests for confidential treatment unless a FOIA request is made for the information.

²¹⁵ Notice at para. 29. In another proceeding referenced in the Notice at n. 53, we proposed the use of a standard protective order for use in all Commission proceedings where a request for confidential treatment was made. See *In re Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Notice of Inquiry and Notice of Proposed Rulemaking, GC Docket No. 96-55, 11 FCC Rcd 12460 (1996)(GC Dkt. No. 96-55).

²¹⁶ Ad Hoc Comments at 11; AT&T Comments at 19; Bell Atlantic Comments at 8-9; SWBT Reply at 13; GSA Comments at 14-5.

1996 Act relieves us of our obligation to determine whether information in our possession may properly be withheld from the public despite the shortened tariff review process.²¹⁷ AT&T states that, although Exemption 4 of the FOIA²¹⁸ protects certain trade secrets and financial data from disclosure, it is well-settled that an agency invoking a FOIA exemption bears the burden of establishing its right to withhold information from the public. Therefore, AT&T concludes, we cannot simply accept a submitting party's assertion that tariff support materials are confidential. Moreover, AT&T asserts, data that are subject to a protective order are not automatically covered by Exemption 4. An agency still must demonstrate that the information in question is exempt from FOIA disclosure.²¹⁹ Bell Atlantic takes the position that there is no legal requirement that cost support data must be available to the public. Moreover, even if there were such a requirement, Bell Atlantic contends, there would be no reason to continue following such a rule given the current level of competition.²²⁰ USTA also favors elimination of cost support data for streamlined tariff filings and states that, if this proposal were adopted, there would be no need for protective orders. In the alternative, USTA favors the use of standard protective agreements on a case-by-case basis.²²¹ Ad Hoc maintains that the openness of the tariff review process would be compromised if data are routinely withheld from disclosure.²²²

89. Ameritech, NYNEX, and TW Comm support, to some extent, the routine use of standard protective orders. Ameritech first argues that it supports elimination of the requirement to file cost support data.²²³ To the extent, however, that this requirement is retained, Ameritech favors the use of standard protective orders. Ameritech contends that the use of protective orders provides protection to data that in its view are intrinsically proprietary while enabling the tariff review process to go forward.²²⁴ Ameritech supports using the model

²¹⁷ AT&T Comments at 19.

²¹⁸ 5 U.S.C. § 555(b)(4).

²¹⁹ AT&T Reply Comments at 18-19.

²²⁰ Bell Atlantic Reply Comments at 8.

²²¹ USTA Comments at 13.

²²² Ad Hoc Comments at 11.

²²³ Ameritech Comments at 18-19; *see also* SWBT Reply Comments at 13.

²²⁴ Ameritech Comments at 19. USTA and Bell South also favor elimination of cost support data in streamlined tariff filings. USTA Comments at 13; Bell South Comments at 16.

protective order it submitted with a number of other parties in GC Docket No. 96-55.²²⁵ While NYNEX supports the use of a standard protective order, it also wants carriers to have the option of seeking nondisclosure of highly sensitive data under certain circumstances.²²⁶ TW Comm states that the use of protective orders should be limited to those circumstances where a LEC demonstrates that confidential treatment of its data is necessary to prevent competitive harm. If the LEC makes such a showing, TW Comm suggests, the data should be made available to interested persons under a narrowly-drawn protective order. TW Comm states that the terms of the protective order should be limited only to protecting the legitimate competitive interests of the LEC. TW Comm maintains that this goal could be accomplished by narrowly limiting access to the material to those persons who are preparing petitions in opposition to the tariff or participating in a tariff investigation.²²⁷

90. TRA contends that, if a carrier chooses to use streamlined tariff procedures, it forfeits its right to request confidential treatment of its cost support data.²²⁸ SWBT opposes this position.²²⁹ CBT argues that, while it generally supports the use of protective orders, it recognizes that they do not afford absolute protection against disclosure of data. CBT maintains that it would be preferable for us to determine that the new competitive environment has caused a fundamental change in the nature of tariff proceedings and that the public interest in open tariff proceedings is now outweighed by the submitting party's need to protect competitively sensitive information. CBT suggests, therefore, that competitors' requests to review competitively sensitive information be rejected.²³⁰ GSA maintains that standard protective orders should be imposed on a routine basis. It contends that LECs should be able to prevent disclosure of their data and that interested parties should be able to petition the Commission for access. Further, GSA proposes that the Commission establish standards for a LEC to prevent disclosure of its cost support data, but GSA does not suggest what these standards should be.²³¹

²²⁵ Comments of Joint Parties -- Ameritech, Bell Atlantic, Bell Communications Research, Inc., BellSouth, NYNEX, Pacific Bell and Nevada Bell, US West -- filed in GC Docket No. 96-55 (June 14, 1996). USTA also favors use of this model protective order. USTA Comments at 13.

²²⁶ NYNEX Comments at 180.

²²⁷ TW Comm Comments at 9-10.

²²⁸ TRA Comments at 12.

²²⁹ SWBT Reply Comments at 13.

²³⁰ CBT Comments at 15. CBT notes that the comments filed in this proceeding mirror those in filed in GC Docket No. 96-55.

²³¹ GSA Comments at 14-15.

3. Discussion

91. It is evident that existing procedures for responding to requests for confidential treatment or for disclosing supporting cost data under the FOIA cannot be completed in the limited time available for streamlined tariff review.²³² We find that use of standard protective orders for purposes of streamlined LEC tariff review will properly serve the dual purpose of permitting limited access to important information by interested persons while protecting proprietary information from public disclosure. We have used protective orders in a variety of proceedings to protect competitively sensitive material from public disclosure while allowing interested parties to have access to potentially decisional documents.²³³ In so doing, the Common Carrier Bureau stated that

... the competitive threat posed by widespread disclosure under FOIA may outweigh the public benefit in disclosure. In such instances, disclosure under a protective order or agreement may serve the dual purpose of protecting competitively valuable information while still permitting limited disclosure for a specific public purpose.²³⁴

Accordingly, we are issuing, in this Report and Order, a standard protective order for use in review of LEC tariff filings submitted pursuant to section 204(a)(3). The Bureau will use the protective order where the submitting party includes with the tariff filing a showing by a preponderance of the evidence to support its case that the data should be accorded confidential treatment consistent with the provisions of the FOIA or makes a sufficient showing that the

²³² Pursuant to § 0.459 of our rules, 47 C.F.R. § 0.459, a submitting party may request confidential treatment of its cost support data. Parties to the tariff proceeding have 5 working days to file an application for review and 5 working days to seek a judicial stay of the ruling. There is no time limit in which the court must act. In the interim, the material is withheld from disclosure. A party can also file a FOIA request to gain access to the documents. Although effective October 2, 1997, the agency will have 20 days to process initial FOIA requests, we currently must respond to a FOIA request within ten days. 5 U.S.C. § 552(a)(6)(A)(i). Our decisions are subject to Commission and judicial review. See § 552(a)(6) of the FOIA, 5 U.S.C. § 552(a)(6). These time frames will obviously exceed the time available for review of streamlined LEC tariff filings.

²³³ *Letter from Kathleen M.H. Wallman to Jonathan E. Canis, et al., FOIA Control Nos. 94-310, 325, 328, 9 FCC Rcd 6495 (1994), app. rev. pending; Letter from Kathleen M.H. Wallman to John L. McGrew, et al., FOIA Control No. 95-223, 10 FCC Rcd 10574 (Com. Car. Bur., 1995), app. rev. pending (CBT Letter); Letter from Kathleen M.H. Wallman to Gregory Intoccia, FOIA Control No. 95-187, 10 FCC Rcd 13462 (Com. Car. Bur., 1995).*

²³⁴ *CBT Letter, supra.*, at 10575. As noted above, in GC Docket No. 96-55, we proposed a standard protective order for use in all Commission proceedings. The issue of the Bureaus' authority to fashion protective orders tailored to specific types of Commission proceedings will be addressed in that proceeding, in which we expect to issue a decision expeditiously. The protective order adopted here may be modified, as necessary, to make it consistent with the standard protective order adopted in GC Docket No. 96-55.

information should be subject to a protective order. This is the standard applicable in section 0.459 of our rules to requests that materials or information submitted to us be withheld from public disclosure. Therefore, at a minimum, the submitting party must comply with Section 0.459 (b) and (c) of the rules regarding the supporting information that must be included in its request for confidentiality. Because of the shortened LEC tariff notice periods in the 1996 Act, the Bureau will not have time to issue written determinations concerning whether the data are entitled to confidential treatment and still complete the tariff review process.²³⁵ Instead, it will routinely employ the standard protective order in the pre-effective tariff review process to permit meaningful participation by interested parties, so long as the carrier has made a good faith showing in support of confidential treatment. During the course of any follow-on investigation of tariffs filed under section 204(a)(3), the Bureau can make any further determination as necessary concerning a carrier's entitlement to confidentiality. We can and will employ appropriate sanctions against any carriers that abuse opportunities to obtain confidential treatment.

92. This will fully comport with our obligations under the FOIA. We are not, as AT&T suggests, ignoring our obligation to determine whether information qualifies for nondisclosure under either the FOIA or our confidentiality rules as submitting parties will continue to be required to make a persuasive showing that the data in question meet these standards. Moreover, the use of protective orders will prevent the unlimited disclosure of sensitive financial data, and will thereby protect the competitive interests of the filing party. Thus, this approach appropriately balances the competing interests at stake. We, therefore, decline to adopt the approaches proposed by CBT and TRA that propose either that all tariff support material be made public or that, alternatively all such material should be held in absolute confidence. We also believe that protective orders will afford adequate protection to even the highly sensitive data referenced by NYNEX. In addition, we find that ruling on individual requests, as NYNEX proposes, will cause unacceptable delays during a very short tariff review process and our goal in using standard protective orders is to eliminate the opportunity for such delays. Accordingly, we find that the routine use of a standard protective order in LEC streamlined tariff proceedings will eliminate delay during this shortened tariff review process as well as address the concerns of various parties concerning the protection of competitively sensitive financial data. Routine use of a standard protective order will also serve the public interest by enabling interested parties to comment, as provided for in the rules, in LEC streamlined tariff review proceedings. The Notice in this proceeding only proposed use of a standard protective order in the pre-effective review of streamlined tariffs filed pursuant to section 204(a)(3). Thus, the standard protective order adopted here is not required to be used in tariff investigations, although its use is not precluded in those

²³⁵ In the event that a FOIA request is filed, the Commission would carefully review it to confirm that the information for which confidentiality has been requested can be withheld under Exemption 4 of the FOIA. In the meantime, however, any disclosure for purposes of the tariff review process would be subject to the standard protective order.

investigations where we find it appropriate.

93. As noted above, the Notice sought comment on whether the Commission should routinely impose a protective order and what terms should be included in such a standard protective order. The Notice also cited to GC Docket No. 96-55 in which a model protective order has been released for public comment.²³⁶ While, as described below, the standard protective order adopted herein is similar to the standard protective order released for public comment in that proceeding, our decision here is not binding upon any final Commission decision in GC Docket No. 96-55, which is intended to create a standard protective order for use in Commission proceedings generally. We note, however, that a number of the commenters in this proceeding incorporated by reference their comments submitted in GC Docket No. 96-55.²³⁷

94. The standard protective order we adopt is similar to the model protective order in GC Docket No. 96-55, but includes several changes that were suggested by comments in this proceeding, as well as additional clarifying changes that we are adopting *sua sponte*.²³⁸ Significant modifications to the draft model protective order in GC Docket No. 96-55 include: (i) clarifying that consultants under contract to the Commission must execute a Declaration that they will abide by the protective order, unless they have signed a general non-disclosure agreement as part of their agreement with the Commission; (ii) clarifying that unauthorized use of Confidential Information, as well as unauthorized disclosure, is prohibited and subject to sanctions; (iii) clarifying that the prohibition on the unauthorized disclosure or use of the Confidential Information remains binding indefinitely unless the Submitting Party otherwise agrees; (iv) specifying that possible sanctions for violation of a protective order include disbarment from Commission proceedings, forfeitures, cease and desist orders, and a denial of access to Confidential Information in that and other Commission proceedings; (v) clarifying that the Protective Order is also an agreement between the Reviewing Parties and the Submitting Party; and (vi) clarifying that the Submitting Party retains all rights and remedies available at law or equity against any party using confidential information in a manner not authorized by the protective order. We note that the model protective order, as originally proposed, already contains the requirement proposed by the Joint Parties to require each person examining Confidential Information to execute a declaration agreeing to be bound by the terms of the protective order. Finally, because of the requirement for expedited tariff review, we have modified the provision in paragraph 7(b), which would have permitted parties to give certain entities access to confidential material if the Commission gave its approval. Because of the shortened time periods for tariff review, we do not have time to

²³⁶ Notice at para. 29 n. 53.

²³⁷ See, e.g., Ameritech Comments at 21-22; BellSouth Comments at 16.

²³⁸ Ameritech Comments at 21-22; BellSouth Comments at 16 (urging the Commission to adopt the approach advanced by the Joint Parties in their comments in GC Docket No. 96-55).

entertain and rule on such requests.

95. The Commission has, however, declined to adopt certain modifications proposed by commenters. The Joint Parties' proposed to limit the number of authorized representatives able to examine Confidential Information to a maximum of seven with various sub-limits, such as one inside counsel and one outside counsel per party.²³⁹ We believe such a limitation would unduly limit the ability of, for example, a partner in a law firm to obtain the counsel of associates and that the serious consequences of violating a Commission protective order make this limitation unnecessary. We also decline to adopt the Joint Party's suggestion to bar the copying of Confidential Information, because we believe that the proposal imposes an unnecessary burden on the review of such information. We will, however, modify the Protective Order to require a Reviewing Party to keep a written record of all copies made and to provide this record to the Submitting Party on reasonable request.

5. Annual Access Tariff Filings

a. Background

96. Section 69.3(a) of the Commission's rules requires LECs and the National Exchange Carrier Association (NECA) to submit revisions to their annual access tariffs on 90-days' notice to be effective on July 1 of each year.²⁴⁰ We indicated in the Notice that these filings are limited to changes in rate levels, and therefore, are eligible for filing on a streamlined basis.²⁴¹ As part of the annual access tariff filings, LECs are required to file summary material, known as tariff review plans (TRPs), to support the revisions to rates in the annual access tariffs. The TRPs partially fulfill the requirements of sections 61.38, 61.39, and 61.41 through 61.50 of the Commission's rules regarding the supporting information that LECs must provide with their tariff filings.²⁴² We use the TRPs to monitor the LECs' compliance with Part 61 of the rules.

97. In the Notice, we proposed to modify the annual access filing process in light

²³⁹ Comments of Joint Parties in GC Docket No. 96-55.

²⁴⁰ 47 C.F.R. § 69.3(a).

²⁴¹ Notice at para. 30. Section 69.3(h) of the rules provides that with respect to the LECs subject to price cap regulations, their annual filings are limited to changes in the Price Cap Indices (PCIs), rate level changes (with corresponding adjustments to the affected APIs and Service Band Indexes), and the inclusion of new services into the affected indices. See 47 C.F.R. § 69.3(h). Carriers not electing price cap regulation are required to file access tariffs pursuant to Section 61.38 of the Rules (rate-of-return companies), Section 61.39 of the Rules (small telephone companies), and Section 61.50 of the Rules (optional-incentive-regulation companies). 47 C.F.R. §§ 61.38, 61.39, 61.50.

²⁴² 47 C.F.R. §§ 61.38, 61.39, and 61.41- 61.50.

of requirements of the 1996 Act. With respect to carriers subject to price cap regulation, we proposed to require carriers that elect to file under streamlined procedures to file a TRP prior to the filing of the annual tariff revisions that excluded information regarding the carriers' proposed rates but included information regarding the carriers' pricing indices, and to make it available to the public. Under this approach, this agency and interested parties could examine the carriers' current and proposed price cap indices, exogenous cost adjustments, and supporting information in advance of the LECs' submissions of their prospective rates and required supporting documents. We sought comment on this approach and on whether we may, under the 1996 Act, require price cap LECs to submit their TRPs prior to the date that they file their annual access tariffs. Because the price cap TRP would not include information regarding a LEC's tariffed rates, charges, classifications, or practices, we tentatively concluded that the TRP would not trigger application of the notice periods of section 204(a)(3) and that we could require its submission prior to the filing of the annual access tariffs. We also solicited comment on the filing date we should establish for the related TRP if we adopt this approach.²⁴³ With respect to carriers subject to rate-of-return regulation, we proposed to require them to file their TRPs and annual access filings that propose rate increases fifteen days prior to the scheduled effective date of July 1. With respect to each of these proposals, we proposed in the Notice that LECs may nevertheless elect to file under existing rules, and therefore, file their TRPs with the annual access tariffs.²⁴⁴

b. Comments

98. Frontier, CompTel, GSA, MCI, AT&T, ACTA, and, to some extent, Ameritech support the Commission's proposal to require the LECs to file their TRPs in advance of their annual access charge filing.²⁴⁵ They contend that it is within our jurisdiction as part of our regulatory oversight of access tariffs to require the advance filing of TRPs, and that this requirement will enable both this agency and consumers to review the support information fully before reviewing the access tariffs. While AT&T concurs with the Notice's finding that revisions to annual access tariffs involve changes in rate levels and therefore qualify for streamlined treatment, it claims there is nothing in the 1996 Act that prevents us from requiring that TRPs and cost support data be filed in advance of the access tariff filings. AT&T therefore recommends that we retain our current timetable, under which LECs are to

²⁴³ Cincinnati Bell files its access tariff revisions biannually. Cincinnati Bell is an optional incentive regulation company under Section 61.50 of the rules, 47 C.F.R. § 61.50. Under our proposal for streamlining the access tariff review process, if it wished to file its annual access tariff on a streamlined basis, it would also file its TRP containing PCI adjustments and exogenous cost changes at the same time as price cap carriers.

²⁴⁴ Notice at para. 30.

²⁴⁵ Frontier Comments at 5; CompTel Comments at 7; GSA Comments at 15; MCI Comments at 27; ACTA Comments at 6; AT&T Comments at 16-7; Ameritech Comments at 28.

file their TRPs 90 days prior to the effective date of their annual access tariffs.²⁴⁶ CompTel urges that we treat annual access tariffs filed without proper prior notice of the TRP as presumed unlawful.²⁴⁷

99. USTA and the LECs generally oppose requiring advance submission of the TRPs. They argue that the adoption of this proposal would impose an unnecessary burden on LECs, and would be inconsistent with the LEC tariff streamlining requirements of section 402 of the 1996 Act.²⁴⁸ Furthermore, they contend that the TRPs have no significance without the inclusion of the proposed rates. For example, Sprint states that, without the rates, the TRP is pointless because the rates drive the indices.²⁴⁹ USTA contends that the EXG-1²⁵⁰ chart and the PCI-1 chart²⁵¹ are the only pages that do not reference rates and, therefore, could be submitted early. These pages, however, cannot be completed until NECA calculates Long Term Support, which is contained in the Common Line Basket.²⁵² USTA further argues that none of the TRP information can even be filed until the LECs' and NECA's tariffs are completed.²⁵³ These parties argue, therefore, that the annual access filing and the TRP should be filed on the shortened statutory notice periods.²⁵⁴ CBT recommends that the TRP should be eliminated for all LEC carriers in order to establish symmetrical regulation for all types of carriers.²⁵⁵

100. Sprint and Ameritech acknowledge that at least some part of the TRP could be completed before the annual access tariff would actually be filed and that the information

²⁴⁶ AT&T Comments 17.

²⁴⁷ CompTel Comments at 7.

²⁴⁸ See, e.g., NYNEX Comments 25; Bell Atlantic Comments at 5; Pacific Telesis Reply Comments at 15-16.

²⁴⁹ Sprint Comments at 8.

²⁵⁰ The EXG-1 chart presents supporting data for computing the exogenous cost adjustments.

²⁵¹ The PCI-1 chart displays the computation of the price cap indices PCIs for the price cap baskets.

²⁵² USTA Comments at 14.

²⁵³ GTE Reply Comments at 18; USTA Comments at 14.

²⁵⁴ NECA asserts that the semi-annual universal service fund tariff should also be eligible for the shortened notice period. NECA Comments at 4.

²⁵⁵ CBT Comments at 16.

would be valuable to potential customers.²⁵⁶ Sprint argues that the LECs could be required to file their exogenous cost changes and PCI development 15 days prior to the filing of the annual access tariffs.²⁵⁷ Ameritech favors the submission of a modified TRP 15 days before the annual filing. Specifically, Ameritech suggests that price cap LECs file the following information for each price cap basket other than the common line basket: the PCI form showing the existing and proposed PCI; a description and explanation of any exogenous cost adjustments being made; and the proposed upper and lower bounds for the Service Band Indices.²⁵⁸ Ameritech states that, pending access reform, price cap LECs cannot file this information for the common line basket prior to their annual filings because of the interrelationship of NECA's calculation of long-term support and exogenous cost adjustments. Ameritech proposes that the price cap and rate-of-return LECs file a full TRP at the time of their annual filing.²⁵⁹ NYNEX suggests that the Commission use this proceeding to further streamline annual access tariff filings by eliminating the requirement for a detailed list of demand by rate elements, a discussion of how the indices were developed, and other required information.²⁶⁰

c. Discussion

101. The chief purposes of TRPs are to: (i) justify LECs' exogenous cost adjustments to their PCIs; (ii) verify revisions to the price cap indices; and (iii) verify that the proposed rates are within the established price caps. We find that the first two purposes can be accomplished through early filing of TRPs that do not contain proposed rates. Early filing of information concerning exogenous costs and recalculation of PCIs would facilitate review of price cap LECs' annual access filings. We disagree with the LECs' arguments that this information cannot be filed until the tariff is submitted and that the information will have no significance without the proposed rates. Price cap indices are a function of inflation, productivity, and exogenous cost changes. None of these factors is dependent on a LEC's specific rates. Early filing of changes in these areas would facilitate review of the annual access filings within the streamlined notice periods by resolving most of the major issues currently raised in the annual access proceedings.²⁶¹

²⁵⁶ Sprint Comments at 8; Ameritech Comments 27-28.

²⁵⁷ Sprint Comments at 8-9.

²⁵⁸ Ameritech Comments at 28.

²⁵⁹ *Id.*

²⁶⁰ NYNEX Comments at 26.

²⁶¹ For example, most of major issues raised in the *1996 Annual Access Order*, 11 FCC Rcd 7564 (Com. Car. Bur. 1996), involved revisions to LECs' price cap indices and exogenous cost changes.